

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.12.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA  
AND  
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

W.A. NO. 2249 & 2250 OF 1999

The Management of Stanmore Estate  
rep. by its Managing Agent  
Mr. M.S.P.Rajes (died), Yercaud.

2. Dayalan Rajes
3. Mohan Rajes
4. Mrs. Gowri Pandinathan .. Appellants/Petitioners  
(Appellants 2 to 4 brought on  
record as LR's of deceased 1<sup>st</sup> appellant  
vide order dated 24.4.02 in  
WAMP No.1003 & 1004 of 2002)

- Vs -

1. The State of Tamil Nadu  
rep. by the Commissioner &  
Secretary to Government  
Labour Department  
Fort St. George, Chennai 600 009. ... 1<sup>st</sup> Respondent in  
both appeals
2. The Industrial Tribunal  
Tamil Nadu, Chennai 600 104. ... R-2 in W.A. No.  
2250/1993
2. The Neelamalalai Plantation  
Workers Union (INTUC) by its  
Secretary, Yercaud. ... R-2 in W.A. No.2249  
of 1999 &  
R-3 in W.A. No.2250  
of 1999

Writ Appeals filed against the order dated 2<sup>nd</sup> Sept., 1998,  
passed by learned single Judge in W.P. No.4992 of 1989 and 3026 of  
1993.

Petitions filed under Article 226 of the Constitution of India,  
praying for the issuance of Writ of Certiorari, calling for records  
(1) connected with G.O.Ms.No. 1573 labour dated 27/7/1988 and quash  
the said G.O. (as confirmed in Government Letter No. 47174/C2/88-2,  
Labour and Employment dated 10/11/1988) holding that the petitioner

plantation is an establishment of a Seasonal Character or work is performed therein only intermittently (in WP.No. 4992 of 1989).

2. Connected with I.D.No. 55/1984 on the file of the 2<sup>nd</sup> respondent Industrial Tribunal, Tamilnadu, Madras and quash the award therein dated 30.01.1992 holding that the petitioners plantations is an establishment of a seasonal Character of Wrok is performed therein only intermittently (in WP.No. 3026/1993).

For Appellant : Mr. T.M.Hariharan  
in both WA's

For Respondents : Mr. K.Balasubramanian, Spl. G.P.  
for R-1 in both the appeals  
Mr. S.Vaidyanathan  
for R-2 in WA 2249/1999  
R-3 in WA 2250/99

COMMON JUDGMENT

S.J.MUKHOPADHAYA, J.

These appeals have been preferred by the management of Stanmore Estate against common order dated 2<sup>nd</sup> Sept., 1998, passed by learned single Judge in W.P. Nos. 4992/89 and 3026/93.

One of the writ petition, W.P. No.4992/89 was preferred by management against order of the Government in G.O. Ms. No.1573, Labour, dated 27<sup>th</sup> July, 1988 and Government letter No.47174/C-2/88-2, Labour & Employment, dated 10<sup>th</sup> Nov., 1988. The other writ petition, W.P. No.3026/93 was preferred against consequential order made in I.D. No.55/84 on the file of the Industrial Tribunal, Chennai, dated 30<sup>th</sup> Jan., 1992.

2. The brief case of the management is that the appellant, Stanmore Estate, (hereinafter referred to as 'Management') is a coffee plantation in Nagalur Village, Yercaud Taluk, Salem District. The estate comprise of 300 acres of coffee plantation, employing 100 workers apart from few casual labourers. By G.O. Ms. No.1307 dated 15<sup>th</sup> June, 1984, issued from Labour Department of the State, a dispute between the appellant and the respondent, Neelamalai Plantation Workers Union (hereinafter referred to as 'Union') regarding non-employment of 120 workers for the period from 1<sup>st</sup> March, 1983 to 31<sup>st</sup> May, 1983 was referred to the Industrial Tribunal for adjudication. It was registered as I.D. No.55/84. The union filed a claim statement before the Tribunal stating that Stanmore Estate is not a seasonal establishment and it is not entitled to declare annual closure as a seasonal establishment. On the other hand, a plea was taken by the management that Stanmore Estate is a seasonal establishment and due to annual closure, persons were removed. As the matter could have been considered only by the Government u/s 25-A (2) of the Industrial Disputes

Act, 1947, (hereinafter referred to as the 'Act') the management moved before the State Government in an application dated 21<sup>st</sup> July, 1986, for a decision on the question of whether the management of Stanmore Estate is an industrial establishment of seasonal character and whether the work is performed thereon only intermediary u/s 25-A (2) of the Act or Section 25-K (2) of the said Act.

The union filed an objection in the said proceeding and by an order dated 16<sup>th</sup> July, 1987, the State Government rejected the application made by the management against which a writ petition, W.P. No.9147/87 was filed by the management before this Court. The matter was remitted and ultimately on remand, the impugned G.O. Ms. No.1573, Labour, dated 27<sup>th</sup> July, 1988, was passed. The State Government has taken plea that the management has not made out a case to declare the establishment as a seasonal establishment u/s 25-K (2) of the Act.

The management filed further representation to the Government on 19<sup>th</sup> Aug., 1999 and requested to reconsider the matter and reiterated its claim inviting attention to report on the Condition of Labourers in Plantations in India, submitted by Mr.D.V.Rage, ICS, Chairman, Labour Investigation Committee, as was published in 1946 and the report of the Plantation Enquiry Commission, 1958. The state of the working and living condition of the labourers in Southern India published by Central Government in 1984 were also referred to suggest that the work in a coffee plantation is seasonal.

The 1<sup>st</sup> respondent, by letter dated 10<sup>th</sup> Oct., 1988, had informed the State that there was no reason to revise the orders already issued on 27<sup>th</sup> July, 1988.

3. The management has claimed to be a seasonal establishment and assailed the order giving reference to the following facts :-

a) The establishment of the management is a coffee estate, which works only for nine months in a year, is a seasonal establishment. After coffee plants blossom, they should not be disturbed in any manner and, therefore, all work in the estate would be stopped for over a month. Accordingly, during April, May and June, depending on the occurrence of monsoonic rains, there will be annual closure. This aspect has not been considered by the State.

b) The plantation has no operation to perform after harvest for about a month after the blossom set in.

c) Though 'seasonal establishment' is not defined under the Act, it is well understood that an establishment, which by its very nature does not work for whole of the year is a seasonal establishment. In this case, it has been recognised and declared under Employees Provident Fund Scheme that the establishment is a seasonal establishment, which has not been noticed by the State.

d) The coffee crop, being seasonal, the manufacture of coffee in a factory has been statutorily declared seasonal, as per section 2 (12) of the Employees State Insurance Act, this aspect has not been looked into properly nor appreciated by the respondent-State.

On the other hand, according to counsel for the union, except for few days, which is declared like a holiday, the establishment is open and work is taken for the rest of the year.

4. Learned single Judge noticed the aforesaid submission, and further noticed the manner in which coffee plantation is carried out throughout the year in the State and shown hereunder :-

|                     |   |                                                                                    |
|---------------------|---|------------------------------------------------------------------------------------|
| January             | : | Picking                                                                            |
| February            | : | Stripping                                                                          |
| March               | : | Cleaning & Pruning                                                                 |
| April & May         | : | Weeding, Pre-blossom manuring, borer control boundary clearing, Nursery work, etc. |
| June                | : | Shade lopping, removing suckers, handling and spraying                             |
| July & August       | : | Weeding, Post-blossom manuring and planting                                        |
| September & October | : | Spraying lime application, borer control and fly picking                           |
| November & December | : | Picking                                                                            |

The aforesaid particulars were furnished by the State Government to show that the blossom period consists only a very few days and not three months as claimed by the management.

5. Learned counsel appearing on behalf of the appellant tried to refer certain books to show that blossom takes about a month, but such question of fact cannot be deliberated by this Court under Article 226 of the Constitution of India.

The question whether the establishment is seasonal or not is a question of fact, which can be determined only on the basis of evidence on record. The other question whether the period of working is controlled by seasonal condition is also a factor, which could be determined only on the basis of evidence.

6. Apart from the fact that the matter was looked into by the State and deliberated by Tribunal with regard to the nature of work performed by the workmen, learned single Judge noticed the affidavit filed by the establishment, wherein at para-12 (a) it is stated that after the coffee plants blossom, they should not be disturbed in any manner, less the blossom would fall and, therefore, all work in the estate would be stopped for over a month. Taking into consideration the aforesaid fact and the other work and is being done month to month in a coffee plantation and

referred to above and that no mala fide was alleged against any individual and as the order passed by the State Government cannot be stated to be perverse, the writ court refused to interfere with the orders.

7. Similar stand having taken before this Court and having noticed the aforesaid facts and the detailed judgment rendered by learned single Judge, we find no ground made out to differ with such finding. There being no merit, the writ appeals are dismissed. But there shall be no order as to costs.

GLN

Sd/  
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner &  
Secretary to Government  
Labour Department  
Government of Tamil Nadu  
Fort St. George, Chennai 600 009.

2. The Industrial Tribunal  
Tamil Nadu, Chennai 600 104.

- Two ccs to Mr. S. Vaidyanathan, Advocate SR.No. 75689, 756901
- One cc to Mr. Govt Pleader SR 75363

BS (co)  
sg 05/01/08

JUDGMENT IN  
W.A. NOS. 2249 & 2250 OF 1999  
Pronounced on 19.12.2007

सत्यमेव जयते

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